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116 N. Y. Supp. 1030, aff'd in 137 N. Y. App. Div. 866, 122 N. Y. Supp. 584; *In re Green's Estate*, 68 N. Y. Misc. 1, 124 N. Y. Supp. 863. But where the property is taken under the will in lieu of dower, it would seem that the title passes by the will and that therefore the transfer is within the taxing statute. *In re Riemann's Estate*, 42 N. Y. Misc. 648, 87 N. Y. Supp. 731. The principal case, as appears from its reference to the case modified by it, apparently holds that the widow's election to take under the will is a sale to her in exchange for her dower rights, and that such a transaction is not within an act taxing "gifts, legacies, and inheritances," quoting the title of the statute. The text of the act proper, however, is similar to most inheritance tax laws and purports to tax "all property . . . which shall pass by will or by the intestate laws." NEB. LAWS, 1901, c. 54, § 1; 2 COBBEY, NEB. ANN. STAT., 1909, § 11,201. It is submitted that even a sale is within this statute if the title to the property sold passes by will. Cf. *In re Gould's Estate*, 156 N. Y. 423, 51 N. E. 287. As the widow chooses to exchange her dower interest for the beneficial devise under the will, it seems just to make her take the incumbrance with the benefit.

TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — SATISFACTION OF MORAL OBLIGATION. — In 1795 the New York legislature provided for the purchase from the Cayuga Indians of specified lands at 50 cents per acre and their immediate resale at \$2 per acre. In 1909 the legislature voted to pay to the Indians the profits on this transaction. *Held*, that this is a proper exercise of the taxing power. *People ex rel. Cayuga Nation of Indians v. Commissioners of Land Office*, 137 N. Y. Supp. 393 (Sup. Ct., App. Div.).

A contractor agreed with a city to build a sewer under water at a unit price for materials used. Later, at the contractor's request, the city allowed him to build it dry, which resulted in the use of fewer materials. After the contractor had failed in a suit on the contract the city council voted to pay him what he would have received under the original method. *Held*, that this is an improper exercise of the taxing power. *Longstreth v. City of Philadelphia*, 69 Legal Int. 598 (Pa., C. P., Phila. County, Aug. 27, 1912).

It seems well settled that the satisfaction of certain merely moral claims on the public will be a sufficiently public purpose to justify taxation. For instance, a pension for old employees of the state is justifiable. *Trustees of Exempt Firemen's Benevolent Fund v. Roome*, 93 N. Y. 313. Cf. *Opinion of the Justices*, 175 Mass. 599, 57 N. E. 675. The waiver of technical defenses is also allowed. *People ex rel. Blanding v. Burr*, 13 Cal. 343; *New Orleans v. Clark*, 95 U. S. 644. Further, officers may be indemnified for torts incident to their employment. *Messmore v. Kracht*, 137 N. W. 549 (Mich.). See 21 HARV. L. REV. 625. Beyond these instances the law is chaotic. The difficulty seems one of ethics rather than law, the determination of what is a moral claim. In determining this question the legislature should have a large discretion. See *Opinion of the Justices*, 175 Mass. 599, 603, 57 N. E. 675, 677; 21 HARV. L. REV. 277. The result in the New York case is obviously just. The Pennsylvania case seems in conflict with a Massachusetts decision. *Friend v. Gilbert*, 108 Mass. 408. But the conclusion reached is indisputable. It is difficult to see what moral claim a man can have against a city which merely abides by the terms of a fairly made contract. An opposite course by the city, also, would directly encourage inefficiency. But a different result is reached in the case of a voluntary payment by a city for services received under an illegal contract. *Vare v. Wallon*, 84 Atl. 962 (Pa.).

TRADE UNIONS — STRIKES — RIGHT TO STRIKE TO COMPEL DISCHARGE OF NON-UNION EMPLOYEE. — Certain members of an incorporated trade union resigned because its funds were expended in support of a political campaign.

The union then sought to procure the discharge of the ex-members by threatening a strike, none of the workmen being under any contract of service. The ex-members brought a bill for an injunction against the union's action. *Held*, that the injunction will not be granted. *Kemp v. Division No. 241, Amalgamated Association of Street and Electric Ry. Employees of America*, 255 Ill. 213, 99 N. E. 389. See NOTES, p. 259.

WATERS AND WATERCOURSES — NATURAL WATERCOURSES: RIPARIAN RIGHTS — FLOOD WATERS. — The defendants proposed to divert for irrigation purposes on non-riparian lands the surplus water from a stream during seasons of unusual floods. The diversion would inflict no present damage on the plaintiffs who were lower riparian proprietors. *Held*, that the defendants cannot be enjoined. *Gallatin v. Corning Irrigation Co.*, 126 Pac. 864 (Cal.).

A riparian owner has no property in the water of natural watercourses but a right of user as it passes along. This right is subject to similar rights of all the riparian owners and must therefore be reasonable. *Embrey v. Owen*, 6 Exch. 353. If there is an unreasonable use of the water no damage to the lower owner need be shown. *Roberts v. Gwyrfa District Council*, [1899] 1 Ch. 583; *Blodgett v. Stone*, 60 N. H. 167. The principal case purports to follow a previous California decision holding that the lower riparian proprietor must show actual damage where even the natural flow of the river is diverted. *San Joaquin, etc. Irrigation Co. v. Fresno Flume & Irrigation Co.*, 158 Cal. 626, 112 Pac. 182. The court here in its language goes to the further extent of holding that the lower riparian owner has no right whatever in flood waters. It may be said that this result is supportable even at common law on the ground that flood waters are not properly to be considered part of the natural flow, and should be treated as surface waters. But flood waters have been held not to be surface waters. *O'Connell v. East Tennessee, V. & G. Ry. Co.*, 87 Ga. 246. It seems, therefore, that this is another example of the tendency of western courts to break away from strict common-law rules by limiting the rights of riparian owners, in order to meet local conditions. Cf. *Clough v. Wing*, 17 Pac. 453 (Ariz.). See 1 CAL. L. REV. 11.

WILLS — INCORPORATION BY REFERENCE — WHAT WORDS ARE SUFFICIENT. — The testatrix by her will gave certain property to the plaintiff "to dispose of in accordance with my instructions to her." After the death of the testatrix a letter was found in her handwriting addressed to the plaintiff and containing instructions for the disposition of the property. *Held*, that the letter could not be incorporated into the will. *Magnus v. Magnus*, 84 Atl. 705 (N. J.).

The rule adopted by the great weight of authority in both England and America is merely that a definite reference to an extrinsic document as in existence, and proof that the document was in existence when the will was executed, is sufficient to allow incorporation into the will. *Allen v. Maddock*, 11 Moore P. C. 427; *Baker's Appeal*, 107 Pa. 381. The principal case, however, lays it down as an absolute requirement that the reference must be to the document as existing. This, it is submitted, is an unnecessary restriction. If the reference is such as to render the document capable of identification, but the words used could refer equally to a future as well as to a past document, it would seem that parol evidence should be admissible to show that the testator actually did refer to an existing document. Such a rule would not be inconsistent with the general rule that a will, to be effective, must purport to be a final disposition at the time of its execution. But if the reference is too indefinite to render the document capable of identification, as it seems to be in the principal case, there should be no incorporation. The New York courts apparently have entirely repudiated the doctrine of incorporation. *Matter of Emmons'*